



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96591; File No. SR-NYSE-2022-58]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Permanent the Temporary Rule Relief in Rule 36.30**

December 29, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 2022, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the temporary rule relief in Rule 36.30 to allow DMM units to maintain a telephone line at its trading post location, which relief expires on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent the temporary rule relief to Rule 36.30 to allow a DMM unit may maintain a telephone line at its trading post location, which relief expires on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022.<sup>3</sup>

Background

In connection with its response to COVID-19 and its impact on the Trading Floor, the Exchange modified certain of its rules to provide temporary relief,<sup>4</sup> certain of which relief was extended several times.<sup>5</sup> In particular, the Exchange modified Rule 36 to adopt rule text allowing DMMs to use telephones installed at the DMM unit trading post to communicate with personnel not assigned to the Trading Floor but working in locations other than the off-Floor offices of the DMM unit; provided, however, that the telephone numbers of such off-Floor personnel are provided to the Exchange in advance.<sup>6</sup> The temporary relief afforded in Rule

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<sup>3</sup> See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR-NYSE-2020-47) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>4</sup> See, e.g., Securities Exchange Act Release Nos. 89086 (June 17, 2020), 85 FR 37712 (SR-NYSE-2020-52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material 20, and Supplementary Material .30 to Rule 36).

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 94585 (April 1, 2022) 87 FR 20479 (April 7, 2022) (SR-NYSE-2022-18) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2022).

<sup>6</sup> See NYSE Rule 36.30.

36.30 is set to expire on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022. Although the Exchange no longer requires DMM firms to operate with reduced staff, DMM firms have chosen to continue to operate with a mix of employees working remotely and others physically present on the Trading Floor.

#### Proposed Rule Change

In order to address the technological shift in how business communications are conducted in the wake of the pandemic, and how business communications will likely continue even after the pandemic ends, the Exchange proposes to make permanent the amendments to Rule 36.30. To effectuate this change, the Exchange proposes to eliminate language regarding the temporary nature of the relief.<sup>7</sup>

The Exchange believes this proposed rule change would continue to provide DMMs with flexibility to communicate with staff not assigned to the Trading Floor, but who are working remotely. The Exchange believes that remote work options for employees -- whether full or part-time -- have become a permanent feature of the modern workplace and are likely to persist once the pandemic fully subsides. As such, the Exchange believes that allowing DMM units to continue communicating with employees working off-site (at designated phone numbers shared with the Exchange) would continue to provide flexibility to DMMs to maintain necessary communication with staff at the DMM firm with whom they would otherwise communicate if such staff were physically present at an office. As a result, the Exchange believes the proposed change would enable DMM units to continue to efficiently allocate resources and permit Floor-based staff to communicate more easily and seamlessly with off-Floor staff whether such off-Floor staff are working at an office or remotely.

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<sup>7</sup> See proposed NYSE Rule 36.30 (providing that “[a] DMM unit may maintain a telephone line at its trading post location to communicate with DMM unit personnel working in locations other than the off-Floor offices of the DMM unit, provided that the telephone numbers of such persons are provided to the Exchange in advance.”).

As is the case today, Rule 36.30 telephones installed at the DMM unit trading post “shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities.”<sup>8</sup> Moreover, the (continued) requirement that DMM units provide the Exchange with the telephone numbers of the permitted contacts working remotely is an additional safeguard that would provide the Exchange with information that may be important in determining whether DMM units are only communicating with personnel from their off-Floor offices in a manner permitted under Rule 98.<sup>9</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change would continue to provide DMMs with flexibility to communicate with staff not assigned to the Trading Floor, but who are working remotely. The Exchange believes that remote work options for employees -- whether full or part-time -- have become a permanent feature of the modern workplace and are likely to persist once the pandemic fully subsides. As such, the Exchange believes that allowing DMM units to communicate with employees working remotely would continue to enhance communications and ease the logistical burdens associated

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<sup>8</sup> See NYSE Rule 36.30.

<sup>9</sup> Communications by DMM staff on the Trading Floor are governed by NYSE Rule 98.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

with operating with staff working on the Trading Floor and staff working remotely and provide DMMs with needed flexibility in managing their operations. As a result, the Exchange believes the proposed change would enable DMM units to more efficiently allocate resources and permit Floor-based staff to communicate more easily and seamlessly with off-Floor staff whether such off-Floor staff are working at an office or remotely.

The Exchange also believes that the proposal is designed to prevent fraudulent and manipulative acts and practices and would be consistent with the public interest and the protection of investors because DMM units would continue to need to identify the persons working in locations other than the DMM unit's off-Floor offices and submit the telephone numbers of such persons to the Exchange in advance. This additional safeguard would provide the Exchange with information that may be important to determining whether DMM units are only communicating with personnel from their off-Floor offices in a manner permitted under Rule 98. As such, the Exchange believes that the continuation of the existing safeguards are appropriate for supervising and monitoring use of telephones on the Exchange's Trading Floor consistent with the objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather would make permanent amendments to Rule 36.30 that enhance a DMM unit's ability to communicate with staff working remotely (i.e., not on the Trading Floor).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to it will allow the rules discussed above to remain in effect for DMM firms to continue to operate with a mix of employees working remotely and others physically present on the Trading Floor. Accordingly,

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>19</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2022-58 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSE-2022-58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies

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<sup>18</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR- NYSE-2022-58 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12), (59).